Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
2002 Biennial Review of Telecommunications Regulations Within the Purview of the Wireless Telecommunications Bureau	)	WT Docket No. 02-310

SPRINT REPLY COMMENTS

Sprint Corporation, on behalf of its local, long distance and wireless divisions ("Sprint"), hereby replies to certain of the proposals contained in the comments filed in response to the Commission's 2002 Biennial Review proceeding.[1]

I. THE SECTION 11 STANDARD, "NECESSARY IN THE PUBLIC INTEREST," DIRECTS THAT THE COMMISSION RETAIN ONLY THOSE RULES THAT ARE REQUIRED OR INDISPENSABLE

Section 11 commands that the Commission "shall determine" whether "any regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service."[2] If the Commission makes this determination, it "shall repeal or modify" the regulation.[3]

The Commission has already determined that for purposes of Section 11, "there is meaningful economic competition in CMRS mobile telephony generally."[4] Indeed, Chairman Powell has observed that by "any standard," the CMRS market is "the most competitive market in the communications industry."[5]

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[1] *See Public Notice,* The Commission Seeks Public Comment in the 2002 Biennial Review of Telecommunications Regulations Within the Purview of the Wireless Telecommunications Bureau, WT Docket No. 02-310, FCC 02-264 (Sept. 26, 2002). Sprint's failure to address other issues raised in the comments should not be interpreted as meaning that it either supports or opposes the proposals.

[2] 47 U.S.C. § 161(a)(2).

[3] *Id.* at § 161(b).

[4] *2000 Biennial Regulatory Review – Spectrum Aggregation Limits,* 16 FCC Rcd 22668, 22693 ¶ 46 (2001)("*Spectrum Cap Forbearance Order*").

[5] *Id.* at 22727 (Separate Statement of Chairman Powell).

The principal issue before the Commission in this Section 11 proceeding – having found that there exists "meaningful economic competition" in the CMRS market – is interpreting the statutory phrase, "necessary in the public interest." It is axiomatic that a statute should be interpreted using the plain meaning of the words contained in the statute.[6] The D.C. Circuit Court of Appeals, in interpreting another provision of the 1996 Act, has declared that the word "necessary" has a "fairly straightforward" definition: "Something is *necessary* if it is *required* or *indispensable* to achieve a certain result."[7]

Even if one could legitimately contend that the phrase, "necessary in the public interest," is ambiguous, the Commission would still be required to interpret the word "necessary" as required or indispensable. As Chairman Powell has recognized, Section 11 must be read in the context of the "central purpose" of the 1996 Act – namely, "to *promote competition* and *reduce regulation* in order to secure lower prices and higher quality services for American telecommunications consumers":

> These two things – the purpose of the 1996 Act and section 11's mandate – when read together evidence faith that a healthy competitive market can secure public benefits just as ably as government rules.[8]

The deregulatory purpose of the 1996 Act and the Section 11 mandate can be achieved only if the statutory word, "necessary," is given its ordinary meaning. Accordingly, the Commission should confirm that, in a Section 11 analysis, it may retain only those regulations that are required for, or indispensable to, the public interest.

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[6] *See, e.g., Natural Resources Defense Council* v. *Daley,* 209 F.3d 747, 752 (D.C. Cir. 2000).

[7] *GTE* v. *FCC,* 205 F.3d 416, 422 (D.C. Cir. 2000)(emphasis in original). In this case, the court vacated the FCC's definition of "necessary' because it was "unduly broad." *See id.* at 427. The Supreme Court has also vacated as unduly broad the FCC's definition of "necessary' in another portion of the 1996 Act. *See AT&T* v. *Iowa Utilities Board,* 525 U.S. 366, 389-90 (1999).

[8] *Spectrum Cap Order,* 16 FCC Rcd at 22727 (Separate Statement of Chairman Powell)(emphasis in original), *quoting* Pub. L. No. 104-104, 110 State. 56 (preamble).

II. RULE 20.11: THE COMMISSION CANNOT GRANT IN THIS PROCEEDING THE RELIEF USTA SEEKS

USTA makes two requests concerning the LEC-CMRS interconnection rule, Rule 20.11, but neither request is relevant to a Section 11 inquiry.

The Commission has held that the phrase, "additional costs," in the reciprocal compensation statute authorizes a CMRS provider to recover the costs of all "wireless network components [that] are cost sensitive to increasing call traffic," including, among other things, "cell sites, backhaul links, [and] base station controllers."[9] USTA claims that this Commission interpretation of the Act constitutes "unnecessary regulation," and it asks the Commission to reconsider this decision.[10] The Commission cannot grant the relief USTA seeks:

(a) This is a proceeding under Section 11, where the issue is the possible repeal of "any regulation."[11] The Commission order that USTA challenges does not involve a "regulation," but an interpretation of the Communications Act. Accordingly, USTA's request is outside the scope of this Section 11 proceeding.

(b) It is too late in the day for USTA to challenge this Commission order. Reconsideration petitions were due over a year ago,[12] and USTA chose not to file such a petition. USTA's request for relief thus constitutes an impermissible collateral attack on valid Commission orders, and its request for relief must be dismissed for being "procedurally deficient."[13]

USTA also asks that the Commission avoid addressing a recent (September 6, 2002) declaratory ruling petition asking the Commission to reaffirm that wireless termination tariffs are not a proper mechanism for establishing reciprocal compensation arrangements for the transport

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[9] *Developing a Unified Intercarrier Compensation Regime,* 16 FCC Rcd 9610, 9648 ¶ 104 2001). *See also* Letter from Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, to Charles McKee, Sprint PCS, DA 01-1201, 16 FCC Rcd 9597 (May 9, 2001).

[10] USTA Comments at i (FCC should "[d]eny requests to expand the rules to require reciprocal compensation to CMRS providers for the traffic sensitive elements of their mobile network to switch or terminate local traffic to mobile customers.").

[11] 47 U.S.C. § 161(a)(2).

[12] *See* 47 U.S.C. § 405(a)(Reconsideration petitions "must be filed within thirty days from the date upon which public notice is given of the order . . . complained of.").

[13] *See, e.g., Declaratory Rulings Regarding Frequency Coordination in the Private Land Mobile Radio Services,* 14 FCC Rcd 12752, 12757-58 ¶ 11 (1999); *APCO Petition for Clarification,* 14 FCC Rcd 4339,

and termination of telecommunications under the Act.[14] According to USTA, it would be "more efficient" for the Commission to postpone a decision on this petition until it develops a new intercarrier compensation regime.[15] There are numerous defects with USTA proposal as well:

(a) As noted above, this is a proceeding under Section 11, where the issue is the possible repeal of "any regulation."[16] However, USTA does not identify any Commission rule or order that it thinks the Commission should repeal.

(b) The Commission cannot avoid addressing the issue raised in the declaratory ruling petition it identifies, because that petition seeks a reaffirmation of *existing* rules and orders. Even if the Commission adopts of new comprehensive set of "unified" intercarrier compensation rules (and there is no indication that it is prepared to do so in the near future), the Commission would still need to clarify the existing rules to resolve the numerous disputes that are now pending.

(c) Avoiding the issue as USTA suggests would not be "efficient." The comments filed in response to the petition reveal a controversy that is nationwide in scope. If the Commission fails to interpret its own orders and rules, numerous state commissions will be required to fill the void. It is not efficient to have numerous states address the identical issue of federal law (an interpretation of FCC orders), especially as this course poses of real risk of states interpreting the same federal law differently. In addition, if the Commission fails to act promptly on the declaratory ruling petition, it can expect CMRS carriers to begin filing complaints against the offending ILECs. No purpose would be served by requiring carriers to prepare and prosecute numerous complaints that raise the same issue of law raised in the declaratory ruling petition.

III. RULE 52.31: THE WIRELESS LNP REQUIREMENT IS NOT NECESSARY

Sprint agrees with CTIA that the Commission should repeal Rule 52.31, which requires CMRS carriers to provide local number portability ("LNP").[17]

Congress decided in the 1996 Act that LECs should provide LNP, but that it was not appropriate to impose this same obligation on CMRS carriers.[18] Six months later, the Commission

4344 ¶ 10 (1999); *Canyon Area Residents,* 14 FCC Rcd 8152, 8155 ¶ 10, 8156-57 ¶¶ 16-17 (1999); *Rio Grande Broadcasting,* 14 FCC Rcd 17007 (1999).

[14] *See Public Notice,* Comment Sought on Petitions for Declaratory Ruling Regarding Intercarrier Compensation for Wireless Traffic, CC Docket No. 01-92, DA 02-2436 (Sept. 30, 2002), *published in,* 67 Fed. Reg. 64120 (Oct. 17, 2002).

[15] *See* USTA Comments at 6.

[16] 47 U.S.C. § 161(a)(2).

[17] *See* CTIA Petition, WT Docket No. 02-310, at 25 (July 25, 2002).

[18] *See* 47 U.S.C. § 251(b)(2).

nonetheless decided that CMRS carriers should provide LNP, stating that it possessed "independent authority" to act "as we deem appropriate."[19] In imposing this requirement, the Commission did not conduct a cost-benefits analysis (*i.e.,* determine that the benefits of LNP would outweigh the costs of implementing and operating in a LNP environment) – even though in another order adopted on the same day, the Commission recognized that a cost-benefits analysis was central in determining whether new regulations should be imposed on CMRS providers.[20]

Section 11 of the Act commands that the Commission "shall" review "all" regulations in "every even-numbered year."[21] The Commission has never conducted a biennial review of its wireless LNP rule as Section 11 mandates. It did not conduct such a review in its 1998 biennial review, nor did it conduct such a review in its 2000 biennial review.

The Commission imposed the LNP requirement to facilitate competition among CMRS carriers.[22] However, Commission data confirm that the CMRS market is fiercely competitive,[23] and even the Commission has recognized that this competition is "growing rapidly *without LNP*.[24] CMRS competition will intensify through lower prices and innovative new service offerings. LNP undermines these objectives because LNP increases a CMRS carrier's cost structure and diverts the capital CMRS carriers need to deploy new technologies, improve service quality, or introduce new services.

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[19] *See First LNP Order,* 11 FCC Rcd 8352, 8431 ¶ 153 (July 2, 1996).

[20] *See Second CMRS Interconnection Order,* 11 FCC Rcd 9462, 9473 ¶ 18 (1996). *See also Connecticut CMRS Rate Order,* 10 FCC Rcd 7025, 7031 ¶ 10 (1995), *aff'd*, 78 F.3d 842 (2d Cir. 1996); *CMRS Resale Order,* 11 FCC Rcd 18455, 18463 ¶ 14 (1996). Oddly, the FCC did perform a cost-benefits analysis with respect to paging carriers, after which it concluded that an LNP requirement on paging carriers could not be cost justified. *See First LNP Order,* 11 FCC Rcd at 8433 n.451.

[21] 47 U.S.C. § 161(a).

[22] *See, e.g., First CMRS LNP Forbearance Order,* 14 FCC Rcd 3092, 3112 ¶ 40 (1999); *First CMRS LNP Forbearance Reconsideration Order,* 15 FCC Rcd 4727, 4733 ¶ 12 (2000); *Second CMRS LNP Forbearance Order,* WT Docket No. 01-184, FCC 02-215, 17 FCC Rcd 14972, ¶ 20 (July 26, 2002).

[23] *See Seventh CMRS Annual Competition Report,* 17 FCC Rcd 12985 (2002); *Sixth CMRS Competition Report,* 16 FCC Rcd 13350 (2001).

[24] *First CMRS LNP Forbearance Order,* 14 FCC Rcd at 3010-02 ¶ 19 (emphasis added).

The Commission also imposed the LNP mandate to increase competition between wireless and landline services.[25] Wireless services will compete with landline services when CMRS carriers offer ubiquitous coverage and comparable service quality and prices. LNP, however, increases a CMRS carrier's cost structure and money spent on LNP necessarily is capital that CMRS carriers cannot use to improve service quality or expand coverage. LNP thus *inhibits* a CMRS carrier's ability to compete with landline services.

LNP is perhaps the most perverse regulation that the Commission has ever imposed on the competitive CMRS industry. The capability is expensive to both implement and operate, yet this expenditure will not result in the availability of a single new service to the American public. Worse, funds spent on LNP necessarily are sums that CMRS carriers cannot use to invest in things customers care about: better coverage, improved service quality, or new features that will improve their daily lives. The Commission has noted that the capital market available to CMRS carriers has "continued to decline rapidly."[26] Now is not the time to impose a new costly mandate that will inhibit the ability of CMRS carriers to provide the features that customers demand.

IV. RULE 1.1307: THE RULES IMPLEMENTING THE NATIONAL HISTORIC PRESERVATION ACT ARE NOT NECESSARY AS APPLIED TO CMRS CELL SITES

CTIA has recommended that the Commission "streamline" its rules implementing the National Historic Preservation Act ("NHPA"). Sprint submits that for two independent reasons, the Commission should actually repeal its NHPA rules altogether as they apply to tower siting.

First, the Commission does not have the regulatory authority to adopt NHPA rules as applied to tower siting. NHPA applies only to a "federal undertaking."[27] The tower siting deci-

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[25] *See, e.g., First CMRS LNP Forbearance Order,* 14 FCC Rcd 3092, 3112 ¶ 40 (1999); *First CMRS LNP Forbearance Reconsideration Order,* 15 FCC Rcd 4727, 4733 ¶ 12 (2000); *Second CMRS LNP Forbearance Order,* WT Docket No. 01-184, FCC 02-215, 17 FCC Rcd 14972, ¶ 20 (July 26, 2002).

[26] *Public Notice,* Commission Seeks Comment on Disposition of Down Payments and Pending Applications for Licenses Won During Auction No. 35, WT Docket No. 02-276, FCC 02-248, at 3 (Sept. 12, 2002).

[27] 16 U.S.C. § 470f.

sions that CMRS carriers make cannot possibly be "federal undertakings" within the scope of NHPA when, as the Commission has acknowledged, the federal government is not even aware of the location of most CMRS towers.[28] Sprint challenged the Commission's application of NHPA to tower siting over 18 months ago – yet the Commission has not even requested public comment on this petition.[29]

Second, the Commission's NHPA rules are in many instances unnecessary. Congress has determined that local governments, and not the FCC, possess regulatory authority over "the placement, construction, and modification of personal wireless service facilities."[30] Local zoning boards can, and do, review proposed towers for potential aesthetic concerns, including the impact on historic properties. The NHPA rules that the Commission has adopted thus constitute a costly set of redundant regulations that often duplicate the efforts of local government officials who have a direct interest in preserving their own historic properties. In short, the Commission's NHPA rules as applied to the siting of CMRS towers are the very type of rules that Section 11 of the Communications Act is designed to eliminate.

V. RULE 20.18: THE COMMISSION SHOULD ADDRESS REVISIONS TO THE E911 RULES IN THE E911 DOCKET

CTIA recommends that the Commission make several modifications to its E911 rules contained in Rule 20.18.[31] The Public Safety Agencies recognize that some modifications of the E911 rules may be appropriate, but they appear to recommend that any changes to the E911 rules

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[28] *See* FCC, *National Wireless Facilities Siting Policies,* Fact Sheet No. 2, at 28 (Sept. 17, 1996)("[T]he Commission does not maintain any technical information on file concerning the majority of PCS licensees' base stations.").

[29] *See* Sprint Petition for Reconsideration and Clarification, *Nationwide Programmatic Agreement for the Collocation of Wireless Antennas*, DA 00-2907 (May 2, 2001). *See also* Letter to Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, from Sprint Corporation and Verizon Wireless (asking that the Sprint Petition be put on Public Notice) (June 7, 2002).

[30] 47 U.S.C. § 332(c)(7)(A).

[31] *See* CTIA Petition at 18-20.

be made in the E911 proceeding, CC Docket No. 94-102.[32] Sprint agrees with the Public Safety Agencies, especially with its suggestion that the "forward all calls" requirement be reexamined.[33]

Some of the current E911 rules are in need of reform, as both CTIA and the Public Safety Agencies note. Many of these issues have already been raised in the E911 docket, and the Commission recently resolved expeditiously a cost recovery issue that had the potential to delay significantly the deployment of Phase II E911 service.[34]

The focus of the instant Section 11 proceeding is to develop a record so the Commission can "determine whether any such regulation is no longer necessary."[35] While some modifications of the E911 rules certainly would be appropriate, Sprint does not read CTIA's petition as suggesting that the core E911 rules are no longer necessary and should be repealed. Sprint therefore submits that the best approach would be to address these implementation issues in the E911 proceeding, especially since PSAPs and other affected parties are already following the E911 docket and may not be familiar with this biennial review proceeding.

Carriers and public safety agencies have much work to do over the next two years in implementing Phase II service. Sprint recommends that refinements in the E911 rules be handled in the E911 docket and that a more robust biennial review of these rules be postponed until the next, 2004 biennial review.

VI. RULE 24.16: TO PROMOTE REGULATORY SYMMETRY, THE PCS LICENSE RENEWAL RULES SHOULD BE REVISED TO MATCH THE CELLULAR LICENSE RENEWAL RULES

The Commission, in establishing PCS service in 1993, stated its intention to adopt "provisions regarding renewal expectancy that are similar to the revised rules that currently apply to

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[32] *See* NENA, APCO and NASNA Comments.

[33] *Id* at p.3.

[34] *See* Letter from Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, to Kathleen B. Levitz BellSouth, Luisa Lancetti, Sprint PCS, and John T. Scott, Verizon Wireless, CC Docket No. 94-102 (Oct. 28, 2002).

[35] 47 U.S.C. § 161(a)(2).

the cellular service."[36] However, the PCS license renewal rules actually promulgated do not match the cellular rules. While the cellular rules describe a two-step renewal procedure, the single PCS rule does not describe the license renewal procedure at all (other than to reaffirm the entitlement to a renewal expectancy). *Compare* Rule 22.935-22.940 *with* Rule 24.16.

Congress established the CMRS classification in the 1993 Budget Act largely to "achieve regulatory parity among services that are substantially similar."[37] The Commission has "consistently found that section 332 of the Act requires that similar types of mobile service, such as broadband PCS and cellular, be regulated similarly."[38] CTIA asked the Commission to address the disparate license renewal rules in 1999 and again in 2000.[39] CTIA repeated this request in its July 25, 2002 petition in this proceeding.[40] Sprint urges the Commission to address promptly the narrow proposal the CTIA has made.

CTIA's proposal is not controversial. Harmonizing the cellular and PCS license renewal rules would be consistent not only with the regulatory parity directive of the Act, but also with the Commission's own original intention to adopt symmetrical renewal rules. The "fix" would also be straightforward. For example, the Commission could amend Rule 24.16 simply to state: "The PCS renewal process shall be governed by the cellular renewal rules set forth in Sections 22.935 through 22.940."

PCS renewal proceedings will commence in less than three years. To eliminate the potential for uncertainty and controversy at that time and to promote the regulatory parity directive of the Act, the Commission should promptly revise its Part 24 rules so the PCS license renewal

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[36] *Second PCS Order,* 770, 7753 ¶ 131 (1993).

[37] H.R. REP. NO. 103-111, 103d Cong., 1st Sess., at 259 (1993).

[38] *BellSouth Section 271 Louisiana Order,* 13 FCC Rcd 6245, 6290 n.259 (1998)(additional citations omitted).

[39] *See* CTIA, Petition for Rulemaking to Extend the Part 22 Cellular Renewal Rules to the Part 24 Personal Communications Service (Dec. 21, 1999); CTIA Biennial Review 2000 Comments, CC Docket No. 00-175, at 9-10 (Oct. 10, 2000).

procedures are the same as those set forth in Part 22 that have been successfully utilized in the renewal of cellular licenses.

VII. CONCLUSION

The CMRS industry, Chairman Powell has observed, is "the most competitive market in the communications industry":

> We should now cede to the competitive market and the wonderful consumer benefits that spring from it, yet with our remaining tools, we will diligently monitor, police and scrutinize any trends or transactions that will reverse these benefits.[41]

Given the competitive state of the CMRS industry and especially given the difficult capital markets it is encountering, it is time for the Commission to adopt meaningful deregulation of the CMRS industry.

For the foregoing reasons, Sprint Corporation respectfully requests that the Commission take actions consistent with the positions discussed above.

Respectfully submitted,

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[40] *See* CTIA Petition at 22-23.

[41] *Id.* at 22727-28 (Separate Statement of Chairman Powell).